

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	1:19cr59
v.)	
)	
DANIEL EVERETTE HALE)	

NOTICE OF HEARING

PLEASE TAKE NOTICE that on Friday, September 13, 2019, at 9:00 a.m., the government will move the Court to set a deadline no later than September 30, 2019, for the defense to notify the government under Section 5 of the Classified Information Procedures Act ("CIPA", 18 U.S.C. App. § 3) of any classified information that it expects to disclose in connection with the trial in the above-captioned matter.

On July 19, 2019, at the status hearing on this matter, this Court set a motions hearing date of October 18, 2019, to ensure that motions could be resolved well in advance of trial, and that the parties could prepare for trial without the uncertainty of pending motions. In light of the motions hearing date of October 18, 2019, this Court directed that all motions be filed by September 16, 2019. Responses to such motions would be filed by September 30, 2019, and replies to such responses would be filed by October 7, 2019.

On September 3, 2019, defense counsel informed government counsel that the defense understood the motions filing date to be inapplicable to its notices under CIPA, and that the defense understood that its deadline for filing its notices under CIPA to be November 16, 2019.

Section 5 of CIPA provides:

If a defendant reasonably expects to disclose or to cause the disclosure of classified information in any manner in connection with any trial or pretrial proceeding involving the criminal prosecution of such defendant, the defendant shall, ***within the time specified by the court or, where no time is specified, within thirty days prior to trial***, notify the attorney for the United States and the court in writing.

(emphasis added). In this case, the defense apparently does not share the government's understanding that September 16, 2019, was specified by the Court as the time by which the defense's CIPA notices were required to be filed. The defense represents that, pursuant to Section 5 of CIPA, its only deadline for filing its CIPA notices is November 16, 2019.

If the defense's CIPA notices are not filed until that date, then the government's responses to such notices are likely not to be filed until November 30, 2019, and any reply to such responses are likely not be filed until December 9, 2019. As a result, CIPA litigation is either going to remain unresolved until the very brink of the trial scheduled for December 16, 2019, or cause the trial to be postponed.

The defense has had significant time to consider its CIPA filings. To the extent that the deadline of September 16, 2019, does not apply to its CIPA filings, the Court should require the defense to file such pleadings no later than September 30, 2019.

Respectfully submitted,

G. Zachary Terwilliger
United States Attorney

_____/s_____
Gordon D. Kromberg
Assistant United States Attorney
Virginia Bar No. 33676
Assistant United States Attorney
Attorney for the United States
2100 Jamieson Avenue
Alexandria, VA 22314
(703) 299-3700
(703) 837.8242 (fax)
gordon.kromberg@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all attorneys of record.

_____/s_____
Gordon D. Kromberg
Assistant United States Attorney
Virginia Bar No. 33676
Assistant United States Attorney
Attorney for the United States
2100 Jamieson Avenue
Alexandria, VA 22314
(703) 299-3700
(703) 837.8242 (fax)
gordon.kromberg@usdoj.gov